No. 85-2113

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

A. H. ROBINS COMPANY, INC.,
Petitioner,

v.

ELI LILLY AND COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF IN OPPOSITION OF RESPONDENT ELI LILLY AND COMPANY TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner's statement of questions presented attempts to fabricate issues of importance where none exist or which bear no relation to the facts of this case. When stripped of obfuscating embellishment, it will be seen that petitioner's principal complaint is that the district court and court of appeals decisions were factually deficient. Restated, therefore, the question presented is nothing more or less than whether the Court of Appeals for the Federal Circuit properly found that the petitioner failed to establish that the facts found by the district court were clearly erroneous.

RULE 28.1 STATEMENT

Respondent, Eli Lilly and Company, provides the following list of corporate affiliates in compliance with Rule 28.1:

Hopewell International Co. Ltd. (Bermuda)
United Insurance Co. (Cayman Islands)
Delta Holdings, Inc. (Bermuda)
Elanco Ihara K.K. (Japan)
Japan Elanco Company, Ltd.
Shionogi Lilly K.K. (Japan)
Elizabeth Arden Sociedad Anonima Espanola (Spain)
Dong Yang Elanco Co., Ltd. (Korea)
Elangri, S.A. (Spain)
BCR and Lilly Co., Ltd. (Hungary)
Daewong Lilly Pharmaceutical Co., Ltd. (Korea)
Eli Lilly-Gohar (Private) Limited (Pakistan)
Quimica 4, C.A. (Venezuela)
Venezolana de Antibioticos y Quimioterapicos, S.A. (Venezuela)
Lilly Indiana de Espana, S.A. (Spain)
Valquimica, S.A. (Spain)
Elmedin, S.A. (Spain)
Dista, S.A. Espanola (Spain)
Centro de Investigacion Valquimica (Spain)
Elanco Veterinaria, S.A. (Spain)
Sefri, Ingenieria y Mantenimiento, S.A. (Spain)
Eliquiber, S.A. (Spain)
Grima Quimica, S.A. (Spain)
Elanco Agricola, S.A. (Spain)
Elanco Premezclas, S.A. (Spain)
IVAC Iberica, S.A. (Spain)
Elanco Industrial, S.A. (Spain)
Fundacion Valgrande (Spain)

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BRIEF IN OPPOSITION OF RESPONDENT ELI LILLY AND COMPANY TO PETITION FOR WRIT OF CERTIORARI

REASONS FOR DENYING THE WRIT

This case presents no reviewable issues for this Court. Aside from petitioner's unwarranted attack on the Federal Circuit as being pro-patent, which—even if true—would have nothing to do with the merits of the instant case, petitioner's grounds for appeal to this Court hinge solely upon alleged errors in the lower court decisions. This case presents no conflicts between jurisdictions, no constitutional questions, and

no questions of major importance. The alleged errors are, for the most part, specific to this case, and the decision will affect no one other than the litigants.

Moreover, petitioner's allegations of errors are completely without merit. The petition virtually ignores the record to contrive a scenario of legal and factual error that simply does not exist in this case. Indeed, the Federal Circuit, Chief Judge Markey presiding, thought so little of these same contentions that it affirmed the district court decision with a per curiam, unpublished, three paragraph opinion.

Petitioner's principal ground for granting certiorari is that the district court failed to make nonobviousness findings along the guidelines of *Graham v. John Deere Co.*, 383 U.S. 1 (1966), and that the Federal Circuit should have remanded the case for the district court to make such findings (PET-3).[1] Petitioner's contentions as to the shortcomings of the district court findings, however, are belied by a simple review of the opinion itself. As the Federal Circuit clearly recognized, even though the district court did not delineate sections of its opinion to correspond to each of the *Graham* findings, it did deal with each of those findings—scope and content of the prior art,[2] differ-

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[1] Petition at page 3. References to petitioner's appendix are abbreviated "PA." References to respondent's appendix are abbreviated "RA."

[2] The district court made findings with respect to each of the major items of prior art identified by petitioner: (1) monensin and several other specified polyether antibiotics were reported to improve feed-utilization efficiency in cattle (PA-7-8), (2) monensin was known to be useful to treat coccidiosis in poultry (PA-5), (3) salinomycin, the compound used in the method of the '224 patent, had been previously discovered (PA-5), and (4) sal-

ences between the invention and the prior art,[3] and level of skill in the art[4] (PA-1). Petitioner's complaint that the district court did not comply with Rule 52(a) simply ignores these detailed findings.

As to secondary considerations, which *Graham* states may have relevance to the obviousness inquiry, 383 U.S. at 17-18, petitioner departs from its theme that the district court did not make the necessary findings to contend that the court made erroneous findings. Specifically, petitioner alleges that the district court erred by referring to respondent's research and testing as the source of the discovery that the method of the '224 patent was nontoxic and twice as efficacious as the prior art, because respondent never tested the method (PET-4). Aside from the fact that an invention's properties are not secondary considerations—properties are inherent parts of the invention and must be considered as part of the primary

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inomycin was known to be a polyether and to be effective to treat coccidiosis in poultry (PA-7). The district court also found that each of the additional items of prior art relied upon by Robins (i.e., art not before the Patent and Trademark Office during prosecution of the patent-in-suit) were cumulative to the art specifically discussed in the opinion (PA-8).

[3] The district court found that as of the date of invention: (1) no one knew whether salinomycin was a feed-utilization efficiency improver (PA-9), (2) no one knew whether salinomycin was toxic (PA-9), and (3) no one knew salinomycin was twice as active as the best prior art compound, monensin (PA-9).

[4] The parties entered into a stipulation prior to trial which made a finding on level of skill in the art unnecessary. Moreover, the district court's discussion of the development of the invention and, in particular, its reliance upon the testimony of respondent's experts that the claims in suit were nonobvious (PA-10), demonstrate that it inherently considered the level of skill in the art in reaching its decision.

nonobviousness analysis regardless of the source of the data—the district court recognized a critical fact that petitioner conveniently ignores. The method of the '224 patent involved the use of an antibiotic compound that is essentially identical to another compound discovered and tested at great length by respondent and whose history is inextricably related to the invention of the '224 patent (PA-6-7).[5] It was the combined testing of these two compounds that led to the discovery that the method of the '224 patent is nontoxic and highly efficacious. Accordingly, the district court properly observed that no one knew whether the method of the '224 patent was nontoxic or efficacious until respondent's research.[6]

In view of the above, petitioner's allegations that the Federal Circuit has been inconsistent in its requirement that the district courts follow the guide-

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[5] Respondent began testing salinomyin because it appeared to be very similar to A-28086, a compound earlier discovered by respondent (A-6). Respondent tested A-28086 in live animals and found A-28086 to be nontoxic and at least twice as effective as the best prior art compounds (A-6). This research, in combination with the discovery that salinomycin and A-28086 were essentially identical and with the discovery that salinomycin was highly active in laboratory tests, led the inventors to conclude that salinomycin was also nontoxic and effective as a feed-utilization efficiency improver.

[6] Petitioner's charge that respondent intends to suppress the claimed invention similarly ignores respondent's work with A-28086. Respondent has spent millions of dollars developing A-28086 for commercial use and is currently seeking regulatory approval for this compound. Given their similarities, one would not reasonably have expected respondent to develop both compounds.

lines of *Graham* are irrelevant to the instant case. Here, the district court did follow *Graham*. Cases cited by petitioner where the Federal Circuit allegedly ignored *Graham* are not before this Court.

Moreover, contrary to petitioner's charge, the Federal Circuit has championed the *Graham* guidelines since its inception and has been consistent in its application of *Graham*. Even the cases cited by petitioner do not support its charge. In *Jones v. Hardy*, 727 F.2d 1524 (Fed. Cir. 1984), the Federal Circuit conducted a *Graham* analysis based upon undisputed evidence in the record. Similarly, in *Panduit Corp. v. Dennison*, 774 F.2d 1082 (Fed. Cir. 1985), vacated, ___ U.S. ___, 106 S.Ct. 1578 (1986), the Federal Circuit conducted a *Graham* analysis even though the case itself was not cited. This Court vacated *Panduit*, not because the Federal Circuit failed to conduct a *Graham* analysis, but because the court reversed without explicitly applying the clearly erroneous standard. No similar issue exists in the instant case because the Federal Circuit affirmed the district court decision. Finally, in *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861 (Fed. Cir. 1985), the Federal Circuit vacated the lower court decision because the court did not follow the guidelines of *Graham*.

As with many of petitioner's other allegations, petitioner's charges that the Federal Circuit is "blatantly pro-patent" (PET-5) has nothing to do with the merits of the instant case. Furthermore, it is simply not true that the Federal Circuit is pro-patent. Petitioner ignores the entire thrust of the article by respondent's counsel from which petitioner cites statistical data to support its position. The article, which

is reproduced in its entirety in the appendix to this brief, concludes that the statistics show "anything but a bias in favor of patents—either from a validity or infringement standpoint" (RA-2a). Moreover, the article cautions against overgeneralizing from statistical data—advice from which petitioner would have benefitted.

Petitioner opines that "perhaps" the Federal Circuit's "apparent lack of interest" in Rule 52(a) and its "inconsistent treatment" of the *Graham* findings is founded on its "oft repeated refrain" in other cases that "this court passes on judgments not opinions" (PET-7). The Federal Circuit did not repeat or rely on that refrain in this case. The use or proprietary of that concept, therefore, cannot be before this Court. Nevertheless, even assuming the Federal Circuit had reviewed only the judgment rather than the opinion of the trial court, it is entirely proper for an appellate court to do so. This Court, for example, consistently "reviews judgments, not statements in opinions." *Black v. Cutter Laboratories*, 351 U.S 292, 297 (1956); *see also Herb v. Pitcairn*, 324 U.S. 117, 126 (1945). This "oft repeated refrain," moreover, is often no more than a rephrasing of the "harmless error" rule, which is followed by this Court, *see, e.g., Chapman v. California*, 386 U.S. 18, 22 (1967), and which is codified in 28 U.S.C. § 2111. If the judgment of a case has not been affected by an error in the opinion below, judicial economy demands that the judgment be affirmed regardless of the error.

Finally, petitioner alleges that the Federal Circuit erred in upholding the district court's infringement ruling because both courts ignored a limitation added during the prosecution of the patent application (PET-

10). This contention, however, is inconsistent with the opinions themselves. The district court expressly ascribed meaning to the limitation by ruling that the disputed limitation was added to distinguish the invention from its use known in the art (PA-9-10).[7] Facing the identical argument advanced here, the Federal Circuit held that the district court analysis properly ascribed meaning to the claim limitation (PA-2). Having failed even to acknowledge the meaning of the claim limitation adopted by the lower courts, it is apparent that petitioner's true complaint is simply that the courts ascribed a meaning to the limitation other than the meaning that petitioner desired. Such disagreement with the lower courts' decisions is not a proper basis for granting certiorari.

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[7] Specifically, the district court ruled that the limitation was added to distinguish use of salinomycin as a feed-utilization efficiency improver, the invention, from use of salinomycin to treat coccidiosis in poultry, its use known in the art.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

INTRODUCTION

BY DONALD R. DUNNER*

Three years ago, when the Federal Circuit first opened its doors, the patent bar was filled with hope and some apprehension. I think it is fair to say that all shared the hope that the Federal Circuit would eliminate the blight on the patent system created by gross attitudinal differences between the various circuit courts of appeal, attitudinal differences which inevitably led to blatant forum shopping and unseemly races to the courthouse to gain jurisdictional advantages over one's adversaries. It is also fair to say, however, that a number of bar members harbored a concern that the new court would soon develop a parochialism which was felt to be the lot of specialized courts, notwithstanding the protestations of the new court's supporters that it, indeed, was not a specialized court but one of diverse jurisdiction, albeit keyed to subject matter.

How has the court fared now that it has three full years of decisions under its belt?

For what it is worth, my own observation is that the court has scored reasonably well on everybody's scorecard and exceptionally well on the scorecards of most of the court watchers in the patent bar.

To be sure, there are those who are unhappy with certain aspects of the court's performance. Some, for example, have urged that the court has engaged in excessive *de novo* fact finding, in contravention of the constraints of Fed. R. Civ. P. 52(a). Still others have vocalized various and sundry gripes about other miscellaneous aspects of the

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* Assisted by Sharon E. Pula (Associate Attorney) and J. Michael Jakes (Law Clerk), Finnegan, Henderson, Farabow, Garrett & Dunner.
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court's patent-related activities. On the whole, however, I think it is fair to say that almost everybody is pleased with the overall scheme of things and the court's performance in general. While it is still too early to tell, I perceive a sense of those who are students of the court that the court, ultimately, will achieve its original goal of bringing stability to the patent laws and both restoring and increasing confidence in the workings of the patent system.

But you need not take my word for it. For, as the ensuing pages will attest, the court in its first three years has generated a virtual cornucopia of opinions on almost every conceivable topic of interest to patent lawyers. What better way to determine whether the court has come closer to meeting the hopes of its supporters or the apprehensions of its detractors than to provide the readers of this Journal with a collection of wonderfully written and comprehensive reviews of the court's patent-oriented output over its first three years of operation.

And that is exactly what the editors of this Journal have done. The papers which follow these introductory remarks have been written by highly qualified members of the bar, all students of the court who have provided us with an encyclopedic review of Federal Circuit patent law. Hopefully, their work product will serve as a primer for anyone interested in the Federal Circuit's patent views.

But there is more. Recently, a speaker at a BNA conference was reported to have observed that the "CAFC seems to be a plaintiff's court . . . in that it tends to adopt a pro-patent position," holding 60-70% of patent claims valid and 80-90% of the patents infringed. 30 Pat. Trademark & Copyright J. (BNA) No. 751, at 682-83 (Oct. 31, 1985). Since statistics such as these tend to be over-used and over-abused, I thought it would be useful to generate some of my own, to see exactly what the court has been

doing. These statistics are collected at the end of this introduction.

The results, limited as they are given the court's limited existence, are quite interesting. For what they show is anything but a bias in favor of patents—either from a validity or an infringement standpoint.

Table 1, for example, shows that of 69 district court Section 103 holdings, 21 resulted in a finding of validity and 48 of invalidity, for a percentage of 30.4. In the Federal Circuit, on the other hand, those numbers were respectively 37 and 32, for a validity percentage of 53.6. While significantly higher than that of the district court, the percentage of validity holdings at the Federal Circuit level is close enough to 50% to suggest no bias in either direction.

The Section 102 holdings noted in Table 2 tell a similar story, in that the district court and Federal Circuit Section 102 validity findings are respectively 40.6% and 50%.

Nor do these statistics confirm our conference speaker's observation that the Federal Circuit has a heavy bias towards finding infringement. As table 5 illustrates, the district court found infringement 45 times out of a total of 75, for a 60% infringement finding, whereas the Federal Circuit found infringement 39 out of that total of 75, for a 52% infringement finding. Here, the district court was more prone than the Federal Circuit to find infringement, but again the Federal Circuit's record approaches neutrality.

I have no particular comments to make about the remaining statistics in the ensuing collection, other than to admonish the reader against overgeneralizing from this limited data. Together with the more substantive articles that follow, however, one should walk away from this Jour-

nal issue with a fairly comprehensive and educated perception of what the Federal Circuit has been about these past three years.

TABLES

1. Disposition of 35 U.S.C. § 103 Issues in the Federal Circuit
2. Disposition of 35 U.S.C. § 102 Issues in the Federal Circuit
3. Disposition of 35 U.S.C. § 112 Issues in the Federal Circuit
4. Disposition of § 112 Issues (Interferences) in the Federal Circuit
5. Disposition of Fraud Issues in the Federal Circuit
6. Disposition of Infringement Issues in the Federal Circuit
7. Disposition of Cases Involving Jury Verdicts in the Federal Circuit
8. Disposition of Cases Involving Increased Damages in the Federal Circuit
9. Disposition of Frivolous Appeals in the Federal Circuit
10. Disposition of Attorney Fees Awarded in the Federal Circuit
11. Dispostion of Damages in the Federal Circuit
12. Disposition of Cases in the Federal Circuit

TABLE 1*
DISPOSITION OF 35 U.S.C. § 103 ISSUES IN THE FEDERAL CIRCUIT

DISPOSITION BY THE LOWER TRIBUNAL	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT		
	AFFIRMED	REVERSED	VACATED
DISTRICT COURT			
VALID	18 (86%)	3 (14%)	0
INVALID	29 (60%)	13 (27%)	6 (13%)
CLAIMS COURT			
VALID	1 (100%)	0	0
INVALID	1 (100%)	0	0
ITC			
VALID	2 (67%)	1 (33%)	0
INVALID	0	0	0
PTO			
UNPATENTABLE	132 (83%)	25 (16%)	2 (1%)

*The analysis in these tables includes all cases decided by the Court of Appeals for the Federal Circuit in which the court has addressed patent law issues. Published opinions of cases decided by the court from its inception (October 1, 1982) through October 17, 1985 and unpublished opinions of cases decided through October 23, 1985 were analyzed. The tables represent the disposition of the various patent issues by both the lower tribunal from which the case was appealed and the Court of Appeals for the Federal Circuit. The entries in these tables are not representative of the total number of cases before the court, but rather are representative of the number of times each issue has been addressed and decided by the court. For example, if the court addressed and decided multiple issues, such as § 102, § 103 and § 112, the disposition of each issue is included in the tables.

TABLE 2
DISPOSITION OF 35 U.S.C. § 102 ISSUES IN THE FEDERAL CIRCUIT

DISPOSITION BY THE LOWER TRIBUNAL	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT		
	AFFIRMED	REVERSED	VACATED
DISTRICT COURT			
VALID	11 (85%)	2 (15%)	0
INVALID	14 (74%)	4 (21%)	1 (5%)
CLAIMS COURT			
VALID	1 (100%)	0	0
INVALID	1 (100%)	0	0
ITC			
VALID	1 (50%)	1 (50%)	0
INVALID	0	0	0
PTO			
UNPATENTABLE	10 (91%)	0	1 (9%)

TABLE 3
DISPOSITION OF 35 U.S.C. § 112 ISSUES IN THE FEDERAL CIRCUIT*

DISPOSITION BY THE LOWER TRIBUNAL	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT		
	AFFIRMED	REVERSED	VACATED
DISTRICT COURT			
VALID	8 (100%)	0	0
INVALID	4 (40%)	5 (50%)	1 (10%)
CLAIMS COURT			
VALID	1 (100%)	0	0
INVALID	0	0	0
ITC			
VALID	0	0	0
INVALID	1 (50%)	1 (50%)	0
PTO			
UNPATENTABLE	13 (76%)	4 (24%)	0

*Does not include § 112 issues decided in interference proceedings

TABLE 4
DISPOSITION OF § 112 ISSUES (INTERFERENCES) IN THE FEDERAL CIRCUIT*

	AFF'D	REV'D
VALID	3 (75%)	1 (25%)
INVALID	1 (100%)	0

*Award of priority based on whether one party has met requirements of § 112, e.g., whether foreign priority application contained adequate written disclosure, failure to disclose best mode, etc.

TABLE 5
DISPOSITION OF FRAUD ISSUES IN THE FEDERAL CIRCUIT

DISPOSITION BY THE LOWER TRIBUNAL	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT	
	AFFIRMED	REVERSED
DISTRICT COURT		
FRAUD	0	6 (100%)
NO FRAUD	12 (80%)	3 (20%)
CLAIMS COURT		
FRAUD	0	0
NO FRAUD	0	0
ITC		
FRAUD	0	0
NO FRAUD	1 (100%)	0
PTO		
FRAUD	0	0
NO FRAUD	0	1 (100%)

TABLE 6
DISPOSITION OF INFRINGEMENT ISSUES IN THE FEDERAL CIRCUIT

DISPOSITION BY THE LOWER TRIBUNAL	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT		
	AFFIRMED	REVERSED	VACATED
DISTRICT COURT			
INFRINGEMENT	28 (62%)	17 (38%)	0
NO INFRINGEMENT	19 (63%)	9 (30%)	2 (7%)
CLAIMS COURT			
INFRINGEMENT	1 (100%)	0	0
NO INFRINGEMENT	2 (50%)	1 (25%)	1 (25%)
ITC			
INFRINGEMENT	2 (67%)	1 (33%)	0
NO INFRINGEMENT	1 (50%)	1 (50%)	0

TABLE 7

I. DISPOSITION OF CASES INVOLVING JURY VERDICTS IN THE FEDERAL CIRCUIT

LOWER TRIBUNAL JURY VERDICT	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT			
	AFF'D	REV'D	AFF'D IN PART REV'D IN PART	REMANDED
DISTRICT COURT JURY VERDICT	11 (50%)	3 (14%)	6 (27%)	2 (9%)

II. DISPOSITION OF CASES INVOLVING JURY VERDICTS ON § 103 IN THE FEDERAL CIRCUIT

LOWER TRIBUNAL JURY VERDICT	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT			
	AFF'D	REV'D	REV'D IN PART	REMANDED
DISTRICT COURT JURY VERDICT ON § 103 ISSUE WHERE PATENT WAS HELD VALID	1 (50%)	1 (50%)	0	0
DISTRICT COURT JURY VERDICT ON § 103 ISSUE WHERE PATENT WAS HELD INVALID	4 (80%)	0	0	1 (20%)

TABLE 8
DISPOSITION OF CASES INVOLVING INCREASED DAMAGES

DISPOSITION BY THE DISTRICT COURT	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT		
	AFFIRMED	REVERSED	REMANDED
INCREASED DAMAGES AWARDED	9 (90%)	1 (10%)	0
INCREASED DAMAGES NOT AWARDED	4 (80%)	0	1 (20%)

TABLE 9
DISPOSITION OF FRIVOLOUS APPEALS IN THE FEDERAL CIRCUIT

CAFC HELD FRIVOLOUS APPEAL	6 (46%)
CAFC HELD NOT FRIVOLOUS APPEAL	7 (54%)

TABLE 10
DISPOSITION OF ATTORNEY FEES AWARDED IN THE FEDERAL CIRCUIT

DISPOSITION BY THE DISTRICT COURT	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT			
	AFFIRMED	REVERSED	VACATED	REMANDED
ATTORNEY FEES AWARDED	13 (48%)	7 (26%)	7 (26%)	0
LOWER COURT'S REFUSAL TO AWARD ATTORNEY FEES	12 (92%)	0	0	1 (8%)

TABLE 11
DISPOSITION OF DAMAGES IN THE FEDERAL CIRCUIT

DISPOSITION BY DISTRICT COURT	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT					
	AFFIRMED AWARD BELOW	REVERSED AWARD BELOW	MODIFIED AND REMANDED AWARD BELOW	VACATED AWARD BELOW	LOWER COURT REFUSAL TO AWARD AFF'D	LOWER COURT REFUSAL TO AWARD REV'D
REASONABLE ROYALTY	9 (90%)	0	0	0	1 (10%)	0
ESTABLISHED ROYALTY	1 (50%)	0	1 (50%)	0	0	0
COSTS	6* (40%)	0	1 (7%)	0	2 (13%)	6* (40%)
LOST PROFITS	9 (82%)	0	1 (9%)	0	1 (9%)	0
PREJUDGMENT INTEREST	5 (45%)	0	3 (27%)	0	0	3 (27%)
DAMAGES (UNSPECIFIED)	2 (33%)	1 (17%)	0	3 (50%)	0	0

*Includes frivolous appeals cases.

TABLE 12
DISPOSITION OF CASES IN THE FEDERAL CIRCUIT

LOWER TRIBUNAL	DISPOSITION BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT			
	AFF'D	REV'D	AFF'D IN PART REV'D IN PART	REMANDED
DISTRICT COURT	100 (56%)	24 (13%)	48 (27%)	8 (4%)
CLAIMS COURT	6 (60%)	1 (10%)	3 (30%)	0
ITC	6 (55%)	3 (27%)	2 (18%)	0
PTO	168 (79%)	28 (13%)	12 (6%)	5 (2%)